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IN THE

Supreme Court of the United States

OCTOBER TERM, 1965

No. 635

NATIONAL BUS TRAFFIC ASSOCIATION, INC., ET AL,
Appellants

v.

THE UNITED STATES OF AMERICA and
INTERSTATE COMMERCE COMMISSION, *Appellees*

On Appeal From the United States District Court for the Northern District of Illinois, Eastern Division

JURISDICTIONAL STATEMENT

NATIONAL BUS TRAFFIC
ASSOCIATION, INC.
GREYHOUND LINES, INC.
TRANSCONTINENTAL BUS
SYSTEM, INC.
DELUXE TRAILWAYS, INC.

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JURISDICTIONAL STATEMENT

National Bus Traffic Association, Inc; Greyhound Lines, Inc.; Transcontinental Bus System, Inc.; and DeLuxe Trailways, Inc.; appellants herein, appeal from the judgment of the United States District Court for the Northern District of Illinois, Eastern Division, entered on June 3, 1965, dismissing their complaint to set aside the report and order of the Interstate Com-

merce Commission, and submit this statement to show that the Supreme Court of the United States has jurisdiction of the appeal and that substantial questions are presented.

OPINION BELOW

No opinion on the merits was filed by the District Court, but a copy of the unreported order of that Court, entered June 3, 1965, dismissing appellants' action is attached hereto as Appendix A. A copy of the report and order of the Interstate Commerce Commission in Docket No. MC-119262, *Ernest Keller, Jr., Common Carrier Application,* 94 M.C.C. 238 (1963), is attached as Appendix B. A copy of the report of Division 1 of the Commission in that proceeding, reported at 83 M.C.C. 339 (1960), is attached as Appendix C.

JURISDICTION

This suit was brought under 28 U.S.C. § 1336, to suspend, enjoin, annul, and set aside the report and order of the Interstate Commerce Commission, dated December 11, 1963, served January 13, 1964. The judgment of the District Court for the Northern District of Illinois, Eastern Division, was entered on June 3, 1965, and notice of appeal was filed in that court on August 2, 1965. The jurisdiction of the Supreme Court to review this decision by direct appeal is conferred by Sections 1253 and 2101(b) of the Judicial Code, 28 U.S.C. § 1253 and 2101(b). The following decisions sustain the jurisdiction of the Supreme Court to review the judgment on direct appeal: *United States* v. *Drum,* 368 U.S. 370 (1962); *American Trucking Assns., Inc.* v. *United States,* 364 U.S. 1 (1960); *Frozen Food Express, Inc.* v. *United States,* 351 U.S. 40 (1956).

STATUTES INVOLVED

The relevant statutory provisions are the National Transportation Policy, 49 U.S.C., preceding §§ 1, 301, 901, and 1001, and Section 203(b)(1) of the Interstate Commerce Act, 49 U.S.C. § 303(b)(1). They are set forth verbatim in Appendix D.

QUESTIONS PRESENTED

1. Whether or not the court erred in sustaining without explanation a decision of the Interstate Commerce Commission which enunciated a new interpretation of Section 203(b)(1) of the Interstate Commerce Act [49 U.S.C. 303(b)(1)] when the administrative decision was challenged for having no basis in law?

2. Whether or not the court erred in adopting the findings and conclusions of the Interstate Commerce Commission which convert the partial exemption from regulation for motor vehicles employed solely in transporting school children or teachers to or from school into an exemption for motor vehicles transporting school children and teachers on trips to places of historic or cultural interest which have no relation to ordinary, daily transportation to and from a school building?

3. Whether or not the court erred in approving without explanation the reversal by the Interstate Commerce Commission of prior administrative interpretation of the Act in the absence of any proper basis therefor?

4. Whether or not the court erred in approving the Interstate Commerce Commission's liberal interpretation of an exception from the terms of the remedial stat-

ute, which interpretation is so much at variance with the language and purpose of the statute as to constitute an amendment thereto?

STATEMENT OF THE CASE

By application filed November 20, 1959, as amended, Ernest Keller, Jr., of Waldorf, Maryland, sought from the Interstate Commerce Commission a certificate of public convenience and necessity authorizing operation in interstate and foreign commerce as a common carrier by motor vehicle over irregular routes of passengers and their baggage in charter service beginning and ending at points in Charles County, Maryland, east of U. S. Highway 301, and extending to points in the Washington, D. C., commercial zone. Division 1 of the Commission in a report dated July 29, 1960, 83 M.C.C. 339 (Appendix C), indicated that the proposed interstate charter operations would consist of the transportation of school children and teachers on school-sponsored trips to Washington, D. C., during the school year, arranged as part of the educational process, and paid for by the school, and thus are covered by the partial exemption in Section 203(b)(1).

On November 9, 1960, appellant National Bus Traffic Association, Inc., on behalf of and for the account of its members, filed with the Commission a petition seeking (a) leave to intervene in the proceeding before the Commission, (b) waiver of the Commission's rule requiring petitions for rehearing, reargument, or reconsideration to be filed within thirty days of the issuance of a report and order complained of, and (c) reopening of the proceeding and reconsideration of the report and order of Division 1. On March 3, 1961, the Commission, at a general session, entered an order denying

the request of appellant National Bus Traffic Association, Inc., for leave to intervene, and stating that such denial of intervention made it unnecessary to dispose of the said petition with respect to the other relief sought.

On or about June 1, 1961, appellants filed a complaint in the United States District Court for the Northern District of Illinois, Eastern Division in Civil Action No. 61-C-944 seeking to set aside and annul the report and order of Division 1 of the Commission and alleging that the Commission erred in refusing to permit appellant National Bus Traffic Association, Inc., to intervene and in refusing to reconsider the decision of Division 1, and further alleging that the decision of Division 1 was erroneous as a matter of law. On November 29, 1962, the District Court, in *National Bus Traffic Association* v. *United States,* 212 F. Supp. 659 (1962), handed down its opinion in which it concluded that the Commission abused its discretion in refusing to permit appellant National Bus Traffic Association, Inc., to intervene in the proceeding before the Commission and remanding the proceeding to the Commission with instructions to permit intervention of the plaintiffs, to waive its rule requiring petitions for reconsideration to be filed within thirty days, and to reopen and reconsider the report of Division 1 dated July 29, 1960. The judgment of the Court was entered on December 4, 1962. The Court expressed no opinion on the merits of the case.

On February 18, 1963, the Commission entered its order responsive to the District Court's judgment and pursuant to that order plaintiffs filed their petition for reconsideration on April 12, 1963. It was not opposed

or replied to by any party. On January 13, 1964, the Commission entered the report and order dated December 11, 1963 (Appendix B). That decision sustained the Division 1, decision in all material respects and is administratively final. In its decision, the Commission concluded that:

> ". . . . in our opinion, the transportation, in interstate or foreign commerce, of school children and their teachers in connection with school related activities on trips sponsored and supervised by school authorities, falls within the scope of the partial exemption of section 203(b)(1) of the act." (94 M.C.C. at 241)

On March 3, 1964 appellants filed their complaint in the United States District Court for the Northern District of Illinois, Eastern Division, in Civil Action 64-C-536, to set aside and annul the report and order of the Commission. On June 3, 1965, the Court entered its order (Appendix A) dismissing appellants' complaint on the merits.

THE QUESTIONS ARE SUBSTANTIAL

The issue presented by this appeal is whether an administrative agency may read into a statute language not placed there by Congress in order to exempt a type of transportation operation from economic regulation because the agency believes the operation should be exempt. Section 203(b)(1) exempts from all but safety regulation "motor vehicles employed solely in transporting school children and teachers to or from school . . .".

1. Admittedly, applicant would limit his transportation to school children and teachers. In construing

the second part of the partial exemption, Division 1 said:

> "We interpret 'to and from school,' as used in the exception, as embracing interstate transportation to or from any place where such transportation is directly connected with and contributes to the educational development of school children. Education development of school children. Education development in this context encompasses a broader area than mere classroom instruction in a school building. *The scope of the teaching process has widened since the passage of the legislation in question, and classroom instruction frequently is supplemented with field and sightseeing trips to points of historical and cultural interest, in order to provide the students with a firsthand knowledge of places, events, and techniques being studied in the classroom.*" (83 M.C.C. 340. Emphasis supplied.)

The entire Commission, in sustaining Division 1, said:

> "As the prior report noted, *schooling today encompasses an area broader than mere classroom instruction.* The teaching process is frequently supplemented, for example, with school-sponsored, educational trips to places of historical and cultural importance so that students may obtain firsthand knowledge and experience of what are properly subjects of classroom instruction . . . . In our opinion, the transportation, in interstate or foreign commerce, of school children and their teachers in connection with school related activities on trips sponsored and supervised by school authorities, falls within the scope of the partial exemption of section 203(b)(1) of the act." (94 M.C.C. 240-41. Emphasis supplied.)

The changed condition in education is the only rationale offered by the Commission for the new, far-

reaching construction it now attaches to the "school-bus exemption". In its decision it did not purport to follow prior, long-standing construction of the partial exemption. Indeed, it made clear that it was establishing a new construction, rather than following precedent, when, in discussing prior decisions in this area, it concluded:

> "However, to the extent, if any, that the Van Galder decision or any of the aforementioned cases may be construed as being inconsistent with the result reached here, they are overruled." (94 M.C.C. 243)

If present-day circumstances have so changed since the enactment of the statute as to warrant a re-evaluation of the scope of the "school-bus exemption"—a proposition for which neither the Commission nor the Division cite any evidence other than their own statements—the remedy properly lies with Congress rather than with the agency. The Commission has no more authority to modify a clear expression of Congressional policy than do the courts. In *American Trucking Assns., Inc.* v. *United States,* 364 U.S. 1 (1960), the argument was made that certain safeguards set out in the legislative policy were no longer needed because of changed transportation conditions. This Court declined the role of legislator:

> "This is an immaterial argument in this forum. We do not condemn the wisdom of the Commission's action. We simply say that the transportation legislation does, and that the pardoning power in this case belongs to Congress." (364 U.S. at 15)

The District Court in *Pennsylvania Truck Lines, Inc.* v. *United States,* 219 F. Supp. 871 (W.D. Pa.

1963), reviewing a decision of the Interstate Commerce Commission, rejected a similar argument, saying:

> "While there may be some merit to the plaintiffs' contention that changed conditions in the transportation industry since the enactment of the Interstate Commerce Act require a reassessment of the National Transportation Policy with respect to railroads, this Court should not become the vehicle for reshaping the laws which Congress has written. The plaintiffs' appeal in that regard must be to Congress itself." (219 F. Supp. at 875)

As to the Congressional policy at issue in the *American Trucking* and *Pennsylvania Truck Lines* cases, there was substantial legislative history to show its basis and reason. However, as the Commission acknowledges, here there is no indication of the legislative purpose. 94 M.C.C. 240. If the courts and the agencies must refrain from modifying the statute in the former instance where they have evidence of the legislative purpose, they must be doubly cautious in the latter, where no such indication of Congressional policy exists.

Thus, the Commission's discussion herein indicates that the narrower view of the partial exemption would curtail the operations of the school-bus operators and "create regulatory problems for the schools" (94 M.C.C. 241), suggesting that the legislative intent was to ease the regulatory burden for this class of operators and make it unnecessary for schools to use regulated passenger carriers for other than daily transportation of pupils between school and their homes. But it is at least equally as arguable, in the absence of a clear expression, that Congress's purpose was to free

the Commission of the burden of regulating a type of operation so insignificant as to have no material impact on the national transportation scene. At least the Commission found that transportation under the exemption, that is, in interstate commerce "does not occur frequently" when it initially considered the matter in *Motor Carrier Safety Regulations—Exemptions*, 10 M.C.C. 533 (1938), *infra*.

While an expansive construction of the exemption might accord with a Congressional purpose to aid school-bus operators, it would be contrary to an intention to free the Commission from dealing with relatively insignificant operations with minimal impact on the regulation of a national transportation system. If changed conditions in American education are to be found to warrant the free entry of economically unregulated school-bus operators into charter transportation throughout the United States in direct competition with the fully-regulated, duly-authorized passenger carriers, Congress must so declare, for such an amendment of the statute lies beyond the power of the Commission.

2. In support of its expansive construction of the partial exemption, the Commission suggests that the words of the statute are ambiguous:

> ". . . Moreover, the words of the exemption, although at first glance they may appear quite clear, are perhaps not quite so unequivocal as interveners would have us believe . . ." (94 M.C.C. 240)

It does this by assuming that "school" in the phrase "to or from school" does not refer to a school building, but may be an abstract term referring to "a body of students and teachers", "a period or session of

teaching", or "the process of formal education itself". (94 M.C.C. 240) The strain necessary to reach the alleged ambiguity is readily demonstrated by substituting each of the Commission's suggested alternatives for the word "school" in the language of the exemption. Indeed, had Congress intended such a broad exemption as the Commission now finds, the report below shows how easily and unmistakably it could have said so. The statute could have exempted

> Motor vehicles employed solely in the transportation of school children and their teachers in connection with school related activities on trips sponsored and supervised by school authorities.

It is a fundamental principle of law that the device of "construction" or "interpretation" may not be used to give a statutory provision a significance beyond its plain meaning. When the words of a statute are clear, there is no reason for construction or interpretation. As long ago as 1820, in *United States* v. *Wiltberger,* 5 Wheat, 76, 95-96, 5 L. Ed. 37, 42, Chief Justice Marshall said:

> "The intention of the legislature is to be collected from the words they employ. Where there is no ambiguity in the words there is no room for construction. The case must be a strong one indeed, which would justify a Court in departing from the plain meaning of words . . . ."

Justice Marshall's words were quoted with approval by this Court as recently as 1957 in *Yates* v. *United States,* 354 U.S. 298, 305.

Construction is a tool for ascertaining the legislative intent when that intent is not clear from the language of the statute. Here, however, the Commission has

used construction to create an ambiguity where none exists. And it has done so in order to modify a clear statutory provision because of its view that educational conditions have changed since the statute's enactment. But as the Court said in *Contract Steel Carriers* v. *United States*, 128 F. Supp. 25, 31 (N.D. Ind. 1955), *aff'd* 350 U.S. 409:

> "Dissatisfaction of an enforcement agency with the provisions of a statute does not open the legislative act to amendment by administrative decision under the guise of interpretation . . . ."

The Commission's error goes beyond construction of a statute clear and unambiguous on its face, because its construction does violence to the purpose and intent of the legislation. The Interstate Commerce Act is remedial legislation and must be liberally construed in order to effect its evident purpose. It is well-settled that exceptions from its reach are to be strictly construed.[1] In *McDonald* v. *Thompson*, 305 U.S. at p. 266, this Court made clear that exceptions to Part II of the Act are not to be broadened by interpretation:

> ". . . As the Act is remedial and to be construed liberally, the proviso defining exemptions is to be

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[1] *McDonald* v. *Thompson*, 305 U.S. 263 (1939); *Piedmont & N. R. Co.* v. *Interstate Commerce Commission*, 286 U.S. 299 (1932); *Interstate Commerce Commission* v. *Teeter*, 228 F. Supp. 479 (D. Ga. 1964); *Interstate Commerce Commission* v. *Interstate Auto Shippers, Inc.*, 214 F. Supp. 473 (S.D. N.Y. 1963); *B & C Truck Leasing, Inc.* v. *Interstate Commerce Commission*, 283 F. 2d 163 (10th Cir. 1960); *Lamb* v. *Interstate Commerce Commission*, 259 F. 2d 358 (10th Cir. 1958); *United States* v. *LaTuff Transfer Service*, 95 F. Supp. 375 (D. Minn. 1950); *Interstate Commerce Commission* v. *Weldon*, 90 F. Supp. 873 (D. Tenn. 1950) aff'd 188 F. 2d 367, cert. den. 342 U.S. 827; *Interstate Commerce Commission* v. *F & F Truck Leasing Co.*, 78 F. Supp. 13 (D. Minn. 1948).

> read in harmony with the purpose of the measure and held to extend only to carriers plainly within its terms . . . ."

The decision of the Commission here is contrary to this well-established rule since it seeks to vastly broaden an exemption from the regulatory control contemplated in the statute.

3. In its decision, the Commission briefly discussed a number of prior decisions dealing with the transportation of school children in an attempt to show that its construction here does not conflict with established precedent. It concluded that these prior decisions were either distinguishable on their facts, did not specifically consider Section 203(b)(1), or did not clearly indicate a prior holding that operations such as are here proposed were beyond the scope of the "school-bus exemption".

The failure of prior decisions to discuss Section 203 (b)(1) when the operations involved were not limited to transportation to and from school buildings does not distinguish those cases, but rather demonstrates that, until the decision here assailed, the meaning of the partial exemption was clearly understood as relating only to routine, daily transportation of children and their teachers between their homes and their regular schools.

In the most nearly contemporaneous consideration we can find of the nature of operations within the scope of Section 203(b)(1), no such broad exemption as found here was contemplated. In *Motor Carrier Safety Regulations — Exemptions,* 10 M.C.C. 533 (1938), the Commission considered the matter of necessary safety regulations to be applied to operations

under the various partial exemptions in Section 203 (b), including the "school-bus exemption". In describing the operations covered by this exemption, the Commission said:

> "Section 203(b)(1) exempts from the general provisions of the act 'motor vehicles employed solely in transporting school children and teachers to and from school'. No representatives of carriers engaged in this form of transportation appeared and testified at the hearings. Well-informed witnesses stated that, in their opinion, but few, if any, common and contract carriers were engaged solely in transporting school children and teachers to and from school in interstate commerce. It is obvious that each State provides schools for the children living within its borders and therefore transportation of school children and teachers in interstate commerce to and from school does not occur frequently.
>
> "It seems entirely clear, however, that if there be common or contract carriers engaged in such transportation in interstate commerce, they should be subjected to the strictest type of safety regulations." (10 M.C.C. at 536-37)[2]

It is clear that the Commission had to consider the entire scope of the partial exemption to determine what type of safety regulations should be applied. It is equally clear that the exemption, in the view of both the Commission and its well-informed witnesses, only embraced transportation of school children and teachers to and from the school buildings in routine daily op-

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[2] That there are such operations, even though limited, is shown in *Hinckley Common Carrier Application*, 14 M.C.C. 757 (1939), in which the exemption was found to cover the transportation of school children to a school across a State line.

erations. This is borne out by the statement that each State provides schools for children living within its borders and the conclusion that "therefore," in the language of the exemption, "transportation of school children and teachers in interstate commerce to and from school does not occur frequently." Had school-sponsored educational trips away from the physical school plant been viewed as being embraced within the partial exemption, that fact would certainly have been noted since it may well have called for a different, special type of safety regulation. And the failure of carriers engaged in operations under the partial exemption to participate in the hearing indicates no extensive operations in interstate commerce such as would have been conducted had the Commission's present broad view of the exemption then been held.

The other decision which specifically discusses the Section 203(b)(1) exemption is *Sam Van Galder Common Carrier Application,* Docket No. MC-112422, decided November 6, 1951, 53 M.C.C. 816 (not printed in full).[3] The Commission noted that the applicant had made his interstate charter operations conform to an informal agency opinion that:

> ". . . . unless the trips made by the students are actually considered to be part of the school curriculum and arranged for as such by school officials, and not by the students themselves or by teachers acting in their behalf, they do not come within the partial exemption mentioned." (Appendix E, p. 16a)

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[3] As the decision is not printed in full in the Commission reports, for the convenience of the Court and the parties, a copy is attached as Appendix E.

Yet, when the Commission came to pass upon the lawfulness of the operations, it held:

> "As seen, applicant has functioned as a school bus operator in Rock County for the past five years, and, as an incident thereto, his service has been chartered for trips to Illinois by certain schools, among others. *He continues to transport school groups in interstate commerce in the belief that he may do so under the partial exemption provided by section 203(b)(1). That section is inapplicable to the described interstate operations,* and applicant should immediately discontinue his interstate charter operations." (Appendix E, p. 22a. Emphasis supplied.)

The service proposed in the *Sam Van Galder* case was virtually indistinguishable from that proposed by Keller in the case at bar. And there the Commission concluded that such operations did not come within the exemption.

Other past decisions support the conclusion that prior to the decision here in issue, the Commission has viewed Section 203(b)(1) as embracing only transportation of school children and teachers to and from school, and as not including school-sponsored charter service such as is here involved. In several instances, the Commission has granted operating authority for operations strikingly similar to those now found exempt. *Perry Common Carrier Application,* 12 M.C.C. 281 (1938); *Country Day School Ass'n of Wichita Contr. Car. Applic.,* 13 M.C.C. 201 (1938); *Georgia Caravan Camps, Inc., Contr. Car. Application,* 23 M.C.C. 477 (1940) (authority found necessary but denied on grounds of fitness); *Kickert Common Carrier Application,* 51 M.C.C. 1 (1949); *Weisse and Enders Common Carrier Application,* 63 M.C.C. 215 (1955).

In all of these decisions, except *Perry,* the educational aspect of the trips was spelled out in the records. Lectures were given and teachers explained the points of interest "in a way that will be most beneficial to the children in their school work the following session" (*Country Day School,* 13 M.C.C. at 202); the students were to be "taught history and geography at points of interest" (*Georgia Caravan*); the transportation was on "field trips to agricultural, industrial, and historical sites," of Chorale societies, and of athletic teams (*Kickert,* 51 M.C.C. at 2-3); the transportation was of athletic teams, or "special trips to points of historical and educational interest" (*Weisse and Enders,* 63 M.C.C. at 261).

Nevertheless, in all of those cases, the Commission found that operating authority was required for the proposed service. While the Commission sought to distinguish these prior decisions on various grounds, it concluded that to the extent, if any, they may be construed as inconsistent with the results in the case at bar, they are overruled. 94 M.C.C. 243. Manifestly, the Commission, in the decision below, has departed from this line of prior decisions and has substantially enlarged the partial exemption provided by Section 203(b)(1). It has done this without any justification from the statutory language and admittedly without aid from the legislative history. The only explanation given in the decision is the Commission's own view of the broadened scope of education today, and its view that the economically unregulated services of school-bus operators *should* be available for trips to places of historical and cultural importance in competition with or, undoubtedly, to the exclusion of the authorized and fully-regulated common and contract carriers of passengers by motor vehicle.

The extent to which the Commission's decision has broadened the "school-bus exemption" can readily be demonstrated. Section 203(b)(1) plainly embraces the day-to-day regular transportation of school children and teachers between their homes and their particular schools. No member of the regulated bus industry, and certainly not these appellants, would quarrel with the performance of such transportation by school-bus operators without Commission-granted operating authority. However, the regular common carriers of passengers by motor vehicle are authorized by Section 208(c) of the Act, 49 U.S.C. § 308(c), under rules prescribed by the Commission, to perform transportation of passengers in charter service to points of historical and cultural importance. By its decision here the Commission has introduced new competition by countless school-bus operators without any finding of need for such service and without any control over the rates and charges to be assessed by these school-bus operators.

Nor has the Commission placed any clearly defined limits upon these new operations except that they be of school children and teachers. In light of the Commission's broad view of schooling today, "school related activities" may embrace activities only remotely connected with conventional classroom study. Likewise, "sponsored and supervised by school authorities" is imprecise and can only lead to confusion and controversy. Is it limited to activities so designated by the school board, by the school principal, or by individual teachers? Does it include activities of athletic teams with faculty coaches, clubs with faculty advisors, school "proms" or other social affairs with faculty chaperones? And of the utmost importance, does it

include sightseeing trips over extended distances and periods of time? It should be noted that the Commission construction is much broader than that of the Division which would have limited the exemption to transportation that "is directly connected with and contributes to the educational development of school children," and that is, additionally, "sponsored and paid for by the school as official school functions." 83 M.C.C. 340 None of these even limited controls were adopted by the Commission.

4. When an agency makes such a radical departure from precedent and substantially modifies clear and unambiguous statutory language, the District Court, in affirming the agency decision, is obligated to spell out the basis for its conclusion. Yet in its terse two-page order the District Court gave no explanation whatever of why it concluded such a new and greatly expanded interpretation of the exemption is warranted. In dismissing appellants' action, it merely adopted the findings and conclusions of the Commission and "the applicable findings of fact and conclusions of law" it reached in 212 F. Supp. 659 in a similarly captioned case. This latter is particularly puzzling since the Court, in 212 F. Supp. 659, did not reach the merits but determined only that appellants should have their day before the Commission. The order of the District Court does not constitute the adequate review of the Commission's action to which appellants are entitled.

CONCLUSION

The questions presented by this appeal are of substantial public importance and warrant plenary consideration by this Court upon briefs and oral argument. For the reasons stated, it is urged that jurisdic-

tion be noted and that the judgment of the District Court be reversed and the case remanded to that court for disposition consistent with the Court's opinion.

Respectfully submitted,

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